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EXAMINER

MEINECKE DIAZ, SUSANNA M

ART UNIT PAPER NUMBER

3623

DATE MAILED: 01/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/874,717

Applicant(s)

FLORES ET AL.

Examiner

Susanna M. Diaz

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 October 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-29 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This final Office action is responsive to Applicant's amendment filed October 12, 2005.

Claims 1, 10, 16, 22, and 26 have been amended.

Claims 1-29 are pending.

2. The previous objection to the abstract is withdrawn in response to the submission of a corrected abstract.

The previous claim objection is withdrawn in response to Applicant's claim amendment.

Response to Arguments

3. Applicant's arguments filed October 12, 2005 have been fully considered but they are not persuasive.

Applicant submits that the amendment to the specification overcomes the objection regarding embedded hyperlinks; however, the amendment deletes and adds the same hyperlinks that were objected to before. Therefore, the objection is maintained.

On pages 12-13 of Applicant's response, Applicant states that "Benc, Lowell, and 'Watch-Ya!' do not disclose automatically transmitting stored usage statistics to a server on a regular basis, whereby said server tabulates said usage statistics" and then broadly challenges the Official Notice "indicating that such operations are old and well

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known to a person of ordinary skill in the art.” Applicant appears to be referring to a newly amended limitation (i.e., a limitation which was not present for the previous Examiner to treat on the basis of its merits); therefore, it is not clear which statement(s) of Official Notice Applicant is challenging. The claim amendments will be addressed in the revised art rejection found below.

Specification

4. The disclosure is objected to because it contains embedded hyperlinks and/ or other forms of browser-executable code (for example: page 4, lines 11 and 19; and page 5, line 6). Applicant is required to delete the embedded hyperlinks and/ or other forms of browser-executable code. See MPEP § 608.01.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. **Claims 1-4, 6-12, 14-18, 20-24, 26, and 28-29 and are rejected under 35**

U.S.C. 103(a) as being unpatentable over Benc Software Production’s web page describing “Application Usage Hack 0.7” (2000) in view of Choate (US 2001/0054026).

Regarding claims 1, 10, 16, 22, 26, and 28-29, Benc teaches a method and a system for monitoring application usage in one or many Palm Computing® organizer electronic devices (page 1, lines 1, 18-20) having a database of records (page 1, line 14) and each having a plurality of application programs (page 1, lines 2-5). The method comprises:

- Ability to gather usage statistics of application programs (page 1, lines 1-5).
- Ability to store usage statistics of application programs (page 1, line 14... teaches the ability to delete the stored statistics).
- Ability to transmit/ export usage data/ statistics to be tabulated on a personal computer (page 1, lines 11-13 and 17-20).

As per claims 1, 10, 16, and 22, Benc does not expressly teach the step of automatically transmitting the stored usage statistics to a server on a regular basis, whereby the server tabulates the usage statistics. However, Choate discloses an application monitoring system that tracks application usage in a networked server-device environment (abstract; ¶¶ 11, 14, 15). Choate's invention facilitates the timely and efficient monitoring of license agreements and usage of music or video files (¶ 3). Benc monitors Palm Computing® applications (page 1, line 1) and it is well-known to use Palm Computing® applications to download licensed software and/or music or video files. Furthermore, Benc continually and automatically monitors usage statistics to be tabulated (¶ 15); therefore, the Examiner submits that it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to modify Benc to

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automatically transmit the stored usage statistics to a server on a regular basis, whereby the server tabulates the usage statistics in order to facilitate the timely and efficient monitoring of license agreements and usage of music or video files (as suggested in ¶ 3 of Choate). Furthermore, since Choate's usage statistics may be collected and used for billing (¶ 5), it is understood that Choate's tabulated statistics are stored in a format that allows them to be queried for billing purposes (Fig. 1; ¶ 14). For the aforementioned reasons, the Examiner further submits that it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to modify Benc to store the tabulate usage results in a database that can be queried, which includes formatting and transmitting results (as per claims 28 and 29), in order to facilitate the timely and efficient monitoring of license agreements and usage of music or video files (as suggested in ¶ 3 of Choate).

Regarding claims 2, 11, and 17, Benc teaches a method for monitoring application usage in one or a plurality of electronic devices. The method comprises for at least one application the storing of:

- Duration of usage since last transmission (page 1, lines 2-5).
- Number of times used since last transmission (page 1, lines 2-5).
- Total duration of usage (page 1, lines 2-5).

Regarding claims 3, 12, and 18, Benc teaches a method for monitoring application usage in one or a plurality of electronic devices. The method comprises:

- Displaying stored usage statistics on a display of electronic device (page 2, Window labeled "AppUsage;" page 3, Window labeled "AppUsage;" page 4, window labeled "AppUsage").

Regarding claim 4, Benc teaches a method for monitoring application usage in one or a plurality of electronic devices. The method described comprises:

- Total duration of usage (page 1, lines 2-5). The literature describing the Benc device conveys to the Examiner the measurement of application usage duration as excluding the time the device is turned off.

Regarding claim 6, Benc teaches a method for monitoring application usage in one or a plurality of electronic devices. The method described comprises:

- Measuring usage data for applications and omitting the time when an interrupt pauses use of the applications (page 1, lines 2-5). The literature describing the Benc device conveys to the Examiner the measurement of application usage as excluding the time the application is interrupted because of a pause and thus the application is not in use.

Regarding claim 7, it is understood that application usage (as taught by Benc) may be broadly interpreted as a fraction of the duration of time between last user interaction and auto-shutdown (or termination of a program, which is automatically controlled by the computing system at some level).

Regarding claims 8, 14, and 20, Benc teaches a method for monitoring application usage in a palm-sized computer system (page 1, line 1 and 18-20).

Regarding claims 9, 15, and 21, Benc teaches a method for monitoring application usage in a plurality of PalmPilot™ organizer electronic devices (page 1, lines 18-20).

Official action is taken that it is old well known to one of ordinary skill in the art that a PalmPilot™ organizer is a palm-sized computer system compatible with the PalmOperating® platform. It is also well known that some cellular phones are also based on the PalmOperating® platform and will run applications compatible with this platform (as evidenced by the Qualcomm pdQ™ cellular phone). It is obvious to one of ordinary skill in the art that the usage program taught by Benc and Coons as well as applications used on PalmPilot™ organizers would be candidate applications to be used on some cellular phones.

Regarding claims 23-24, Benc teaches a method and a system for monitoring application usage in one or many Palm Computing® organizer electronic devices and transmit/ export usage data/ statistics to be tabulated on a personal computer (page 1, lines 11-13 and 17-20).

Benc does not expressly teach that the data can be further transmitted from a personal computer to a server; however, the Benc-Choate combination discussed in

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reference to claims 1, 10, 16, 22, 26, and 28-29 above is applicable to claims 23 and 24 as well. Please note that Choate's network may comprise the Internet (§ 11).

7. Claims 25 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Benc in view of Choate (US 2001/0054026) as applied to claims 22 and 26 and in further view of Lowell (U.S. Patent No. 6,381,632).

Regarding claims 25 and 27, Benc teaches a method for monitoring application usage in one or a plurality of electronic devices and the usage data is transmitted to a server.

Benc does not teach a method comprising the step of:

- crediting value to an account corresponding to a user of at least one of the said electronic devices.

Lowell teaches a method and apparatus for tracking computer usage over a network and the step of:

- crediting value to an account corresponding to a user of at least one of the said electronic devices (column 7, lines 1-3).

Benc and Lowell are analogous in the art of monitoring usage data for electronic devices. It would be obvious to one of ordinary skill in the art to combine the teachings of Benc and Lowell to monitor and store the usage statistics from an electronic device

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and reward the user for allowing the personal information to be collected for the advantage of encouraging users to share information.

8. Claims 5, 13 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Benc in view of Choate (US 2001/0054026) as applied to claims 1, 10, and 16 and in further view of Watch-Ya! (2000).

Regarding claim 5, 13, and 19, Benc teaches a method for monitoring application usage in one or a plurality of electronic devices and the usage data is transmitted to a server.

Benc does not teach for at least one application the storing/ gathering of data including a:

- First duration of usage when the electronic device runs on batteries.
- Second duration of usage when the device is connected to an external source of power.

Watch-Ya! teaches storing/ gathering usage data related to the battery usage of application(s) (page 3, lines 3, 11-13, and 20).

Official notice is that it is well known to one of ordinary skill in the art at the time of invention that different applications consume energy at greater rates than others and this relationship and is considered by developers when designing battery management techniques.

Benc and Watch-Ya! are analogous in the art of providing usage data for electronic devices. It would be obvious to one of ordinary skill in the art to combine the teachings of Benc and Watch-Ya! to store/ gather/ measure for at least one application

a:

- First duration of usage when the electronic device runs on batteries.
- Second duration of usage when the device is connected to an external source of power.

The advantage to combining the teachings of Benc and Watch-Ya! is to improve the efficiency of developers.

Conclusion

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Susanna M. Diaz whose telephone number is (571) 272-6733. The examiner can normally be reached on Monday-Friday, 10 am - 6 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tariq Hafiz can be reached on (571) 272-6729. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Susanna M. Diaz
Primary Examiner
Art Unit 3623

December 27, 2005